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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,139	12/29/2000	Stephen Quirk	11301-0200 (44039-227522)	1818
7590 06/30/2004 SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, PA P. O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER WALICKA, MALGORZATA A	
			ART UNIT 1652	PAPER NUMBER

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/753,139	QUIRK ET AL.	
	Examiner	Art Unit	
	Malgorzata A. Walicka	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 1652

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1-7, and 15-21 drawn to an MMP regulator comprising a zinc chelator and a TIMP-derived peptide and its composition, classified in class 530, subclass 300.
- II. Claim 8-14, drawn to a method of treating chronic or acute wounds, classified in class 424, subclass 185.1.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case acute or chronic wounds can be treated with other pharmaceuticals.

Inventions I-II are distinct for the reasons given above and have acquired a separate status in the art. Because of their recognized divergent subject matter and/or different classification and required searches, restriction for examination purposes as indicated is proper.

In addition, claims 1-23 generic to a plurality of disclosed patentably distinct species comprising regulators of metalloproteinase consisting of the covalently linked species from group A (zinc chelators) and B (TIMP-derived peptide), wherein each of the groups comprises the following species:

Art Unit: 1652

A	B
EDTA	a) 40 sequences described as SEQ ID NO:1 i.e. Cys Xaa Cys Xaa Pro His Pro
EGTA	b) thousands of seq. described as SEQ ID NO:2, i.e., Xaa Xaa Xaa Xaa XaaThr Xaa Xaa Xaa Xaa Xaa
DTPA	c) thousands of seq. described as SEQ ID NO:3, i.e., Xaa Xaa Xaa Xaa XaaCys Xaa Xaa Xaa
SDTA	
HEDTA	d) SEQ ID NO:4
NTA	e) SEQ ID NO:5
IDA	f) SEQ ID NO:6
PSDE	g) SEQ ID NO:7
AFTA	h) SEQ ID NO:8
Citric acid	I) SEQ ID NO:11.
Salicylic acid	
Malic acid	
amino acids SEQ ID NO:9	
amino acid of SEQ ID NO:10	

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from group A and single disclosed species from group B whose covalent linking forms one claimed regulator (product), even though this requirement is traversed.

Art Unit: 1652

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.


Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Malgorzata A. Walicka, Ph.D., whose telephone number is (571) 272-0944. The examiner can normally be reached Monday-Friday from 10:00 a.m. to 4:30 p.m. If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, Ph.D. can be reached on (571) 272-0928. The fax phone number for this Group is (571) 273-0937.

Malgorzata A. Walicka, Ph.D.

Patent examiner

Art Unit 1652



PONNATHAPURA ACHUTAMURTHY
SUPERVISOR
TECHNICAL STAFF